

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: Case No. 1:17-md-2804
Cleveland, Ohio
NATIONAL PRESCRIPTION
OPIATE LITIGATION TUESDAY, OCTOBER 23, 2018

TRANSCRIPT OF DISCOVERY CONFERENCE PROCEEDINGS
BEFORE SPECIAL MASTERS
DAVID ROSENBLUM COHEN
and
CATHERINE A. YANNI

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1 of those individuals.

2 I'll continue. We also have the county council
3 resolutions regarding the specific items and how the county
4 has adopted resolutions or rejected resolutions, as well as
15:26:07 5 the annualized MetroHealth reports, audited financials with
6 respect to each one of those items.

7 We can continue. They've also gone into the county
8 medical examiners, as well as all of the cost bases, as well
9 as all of the costs associated with that office with respect
15:26:25 10 to the deaths and the overdoses as a result of this
11 epidemic.

12 To suggest we have not given them the factual basis
13 for the damages loss in this case is really just
14 unreasonable. Can we give the ultimate conclusion? What is
15:26:39 15 the total numbers that our experts are going to say? We
16 cannot do that right now.

17 We are working with our experts. We will supplement
18 with the -- with the final numbers. But we have given them
19 the factual basis over and over and over again. And that's
15:26:55 20 only just to touch on some of the damages -- sorry -- the
21 dollar amounts associated with the epidemic.

22 MS. WU: Special Master Cohen, interrogatory
23 number 18, distributors' interrogatory number 18 exactly
24 tracks the requirements for initial disclosures in a federal
15:27:14 25 case under Rule 26(a).

1 SPECIAL MASTER COHEN: Yeah. I read your
2 letter.

3 MS. WU: And that requires a computation of
4 damages. To date, no plaintiff has provided any computation
15:27:23 5 of damages in response to interrogatory number 18.

6 I appreciate the list of materials that Mr. Shkolnik
7 identified for us today, and it's true, there's been a lot
8 of paper exchanged in this case. But, to date, no one has
9 been able to identify any line item in the budgets Mr.
15:27:42 10 Shkolnik referenced that relates to opioids directly.

11 In addition, I'd like to just provide an antidote from
12 a recent deposition. The Akron chief EMS officer was
13 deposed, Mr. Natko, last week. During his deposition,
14 defendants inquired about the expenses related to Narcan,
15:28:03 15 which is one of the damages categories that Akron has
16 identified in this litigation. Mr. Natko testified that, in
17 fact, Akron does not pay anything out-of-pocket, does not
18 make any expenditure in order to purchase Narcan, which
19 leaves the defendants puzzling, what is the damages
15:28:22 20 computation for Akron's alleged damages associated with the
21 purchase of Narcan?

22 This is the exact reason that defendants need this
23 discovery now so that we have the opportunity in fact
24 discovery to explore the damages calculations that
15:28:38 25 plaintiffs intend to put forward.

1 And on that point, the law is clear in the Sixth
2 Circuit and across the country that there -- that the expert
3 discovery is no replacement for fact discovery overall and
4 specifically with regard to damages.

15:28:51 5 Plaintiffs come forward saying that it's too
6 burdensome and impossible for them to provide damages
7 calculations now. This interrogatory simply asks plaintiffs
8 to do what every plaintiff in a federal case is obligated to
9 do under Rule 26 at the outset of a litigation and that's to
15:29:12 10 provide damages calculations.

11 SPECIAL MASTER COHEN: All right. Let me go
12 back to where we started.

13 I'm going to order that Ms. Barrett's custodial file
14 be produced. I'm not going to order anybody else's
15:29:27 15 custodial file be produced. That's without prejudice to
16 coming back to me later.

17 In the meantime, I want to see what the plaintiffs do
18 with -- with regard to interrogatory 18. I think that
19 defendants have a very good argument on that point.
15:29:44 20 You've -- you've said that you're going to amend your
21 responses. I think that that's appropriate that you amend
22 your responses, and I think that the Federal Rules of Civil
23 Procedure do require you to give much more than you have.

24 It's my hope that after that, I won't need -- I won't
15:30:02 25 hear from defendants that they need some of these custodians

1 who at this time I am not ordering production.

2 Okay?

3 MS. WU: Special Master, could we ask that we
4 receive those amended responses within a week? We have very
15:30:16 5 important depositions on the calendar upcoming and will need
6 those written amended responses to evaluate the state of the
7 damages case.

8 MR. SHKOLNIK: Would it be possible to have
9 two weeks on that, Special Master Cohen?

15:30:38 10 SPECIAL MASTER COHEN: What kind of depos do
11 you have?

12 MS. WU: I --

13 SPECIAL MASTER COHEN: And when are they?

14 MR. SHKOLNIK: I don't think as to Cuyahoga
15:30:47 15 there's anyone that's really going to be jeopardized, but I
16 could be wrong on that.

17 MR. BOEHM: I don't -- I'm stepping up, but
18 not because I know the schedule by heart. I do know that
19 there's at least one finance director, I believe it's for
15:31:05 20 Summit County, who's going to be deposed on November 6th.
21 So that's the earliest I can think of just off the top of my
22 head.

23 SPECIAL MASTER COHEN: Can you do it by
24 November 5th?

15:31:18 25 MR. SHKOLNIK: Yes, Special Master.

1 SPECIAL MASTER COHEN: All right.

2 MR. ACKERMAN: Yeah.

3 SPECIAL MASTER COHEN: Thank you, all.

4 MS. WU: Thank you.

15:31:29 5 SPECIAL MASTER COHEN: All right. I think we
6 are all the way back now to where Peter Weinberger stood up.

7 MR. BOEHM: Not yet, Special Master Cohen.

8 Actually, there's agenda item number 4 which we would
9 be skipping over if we -- we went to where Peter was going,
10 I believe.

11 SPECIAL MASTER COHEN: I thought we touched on
12 this?

13 MR. BOEHM: Not quite. Not today.

14 SPECIAL MASTER COHEN: Go ahead.

15:31:50 15 MR. BOEHM: I think last week we had hoped
16 that we would be able to work this out completely and
17 wouldn't have it on the agenda at all. The good news is we
18 have worked this out 99 percent of the way.

19 So we had the 14 --

15:32:02 20 SPECIAL MASTER COHEN: Better than we have
21 done anything else.

22 MR. BOEHM: I agree, it is.

23 We had a list of people for whom we wanted earlier
24 depositions, and I know you're familiar with that, that
15:32:13 25 issue.